



COMMONWEALTH OF KENTUCKY

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JUDICIAL ETHICS OPINION JE-18

(Informal)

QUESTION: Must a master commissioner of the circuit court resign from that position if he becomes a candidate for the office of county attorney? If so, when must he resign?

ANSWER: He must resign when he becomes a candidate, that is, when he lets it be publicly known that he is seeking the office in question.

REFERENCES: SCR 4.300, Canon 7A(3) and Compliance Section; Commonwealth ex rel. Breckinridge v. Wise, 351 S.W.2d 493 (1961); Morial v. Judiciary Commission, 565 F.2d 295 (5th Cir. 1977), cert. den. 435 U.S. 1013, 98 S.Ct. 1887, 56 L.Ed.2d 395 (1978).

OPINION: (January, 1981):

The Compliance Section of the Code of Judicial Conduct provides that "a...court commissioner...is a judge for the purpose of this Code. All judges should comply with this Code except as provided below." The exceptions are not relevant for present purposes and will not be set out.

The term "court commissioner" refers to commissioners of the Court of Justice and includes master commissioners of the circuit court and trial commissioners of the district court.

Turning now to Canon 7A(3), we find that "A judge should resign his office when he becomes a candidate either in a party primary or in a general election for a non-judicial office...." since we are told in the Compliance Section that a commissioner is a judge for purposes of the Canons, Canon 7A(3) requires a commissioner as well as a judge to resign under the listed circumstances.

The question then becomes whether the office of county attorney is a non-judicial office. Commonwealth ex rel. Breckinridge v. Wise, 351 S.W.2d 493 (1961) holds that a Commonwealth's Attorney is not a judicial officer. A county attorney stands in no different position. Because he has no adjudicative functions, he is not a judicial officer.

It is clear, then, that Canon 7A(3) requires you to resign the office of commissioner when you become a candidate for county attorney, unless there is merit in the constitutional questions you have raised regarding that Canon. An identical Louisiana Canon survived a constitutional attack in *Morial v. Judiciary Comm.*, supra. In a well reasoned opinion, the court there held (p. 307) that the resign-to-run requirement "bears a reasonably necessary relation to the achievement of the state's interest in preventing the actuality or appearance of judicial impropriety." We can add nothing to this decision holding that the Canon is constitutional.

Turning now to the question of the timing of the resignation, we refer again to *Morial*, where, at 301, it is pointed out that as interpreted in Louisiana the canon does not "prohibit preliminary surveys of financial and voter support. In other words, the canon does not require a prospective candidate to balance a secure judgeship against a complete leap in the dark. The prospective candidate need not resign merely to learn whether he has a realistic chance of election." We adopt that interpretation.

Once having made his decision to run, however, he must resign whenever he announces his intentions to the public, be it by filing with the county clerk, making a press release, or any other method by which he lets his candidacy become generally known.

You also inquired as to the meaning of the last ten words of Canon 7A(3). These words refer to and qualify the preceding clause. That is, a judge may run for and serve as a delegate to a constitutional convention if he meets the statutory requirements for that position. These would probably include residence and similar requirements.

You also ask the relationship between case law and court rules. We can only point out that the usual rules of law apply. A court decision may be modified by a subsequent rule, and conversely a case may interpret an existing rule.



B. M. Westberry, Chairman
Ethics Committee of the Kentucky Judiciary